REMARKS

This is a full and timely response to the outstanding Office action mailed April 19, 2005. Upon entry of the amendments in this response claims 2-18 and 21-46 are pending. More specifically, claims 2, 21, 26, 27, 45, and 46 are amended and claims 19 and 20 are canceled. These amendments are specifically described hereinafter. It is believed that the foregoing amendments add no new matter to the present application.

I. Present Status of Patent Application

Claims 2-8, 19, 22, 23, 27-30, 32, 33 and 46 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Iwase *et al.* (U.S. Patent No. 6,226,263) in view of McKenna *et al.* (U.S. Patent No. 5,684,967). Claim 9-18 and 34-42 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Iwase *et al.* (U.S. Patent No. 6,226,263) in view of McKenna *et al.* (U.S. Patent No. 5,684,967) and further in view of Waters *et al* (U.S. Patent No. 5,832,069). Claim 20 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Iwase *et al.* (U.S. Patent No. 6,226,263) in view of McKenna *et al.* (U.S. Patent No. 5,684,967) and further in view of Nodoushani *et al.* (U.S. Patent No. 6,563,816). Claims 24, 25, 43 and 44 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Iwase *et al.* (U.S. Patent No. 6,226,263) in view of McKenna *et al.* (U.S. Patent No. 5,684,967) and further in view of Farris *et al.* (U.S. Patent No. 5,881,131). Claims 26 and 45 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Iwase *et al.,* (U.S. Patent No. 6,226,263) McKenna *et al.,* (U.S. Patent No. 5,684,967) Waters *et al.,* (U.S. Patent No. 5,832,069) Nodoushani *et al.,* (U.S. Patent No. 6,563,816) and Farris *et al.* (U.S. Patent No. 5,881,131) as applied to claims 2-20, 22-25 and 27-30, 32-44 above respectively. Claims 21 and 31 are object to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

II. Examiner Interview

Applicant first wishes to express his sincere appreciation for the time that Examiner Han spent with Applicant's Agents and Attorneys Jeff Kuester and Benjie Balser during a May 3, 2005 telephone discussion regarding the above-identified Office Action. Applicant believes that using a DSLAM in a DSL network at the time of the invention and filing a 37 C.F.R. §1.131 affidavit to overcome *Nodoushani* was discussed during the telephone discussion, and that the outcome of this discussion is addressed herein. During that conversation, Examiner Han seemed to indicate that it would be potentially beneficial for Applicant to file this amendment and response. Thus, Applicant respectfully requests that Examiner Han carefully consider this amendment and response.

III. Rejections Under 35 U.S.C. §103(a)

A. Independent Claims 2, 26, 27, 45, and 46

The Office Action rejects claims 2, 26, 27, 45, and 46 under 35 U.S.C. §103(a). For the reasons set forth below, Applicants respectfully traverse the rejection. Applicant respectfully asserts that it is not evident from the record that the subject matter of *Nodoushani* used in the rejection was disclosed in the provisional to which *Nodoushani* claims priority. Therefore, it has not been proven that the filing date of the provisional application is the effective date for use in a rejection under 35 U.S.C §103.

Applicant acknowledges that *Nodoushani* claims the priority benefit of a provisional application that was filed on November 17, 1998. However, this priority benefit ONLY applies to the extent that materials of the *Nodoushani* patent are disclosed in the provisional application. In this regard, 35 U.S.C. § 102(e) states:

> A person shall be entitled to a patent unless ... the invention was described in a patent granted ***on an application for patent by another filed in the United States*** before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of

> paragraphs (1), (2), and (4) of section 371 (c) of this title [35 USC §371(c)(1), (2), (4)] before the invention thereof by the applicant for patent, ...

As is clear from 35 U.S.C. § 102(e), the filing date of an application is not automatically treated as the filing date of a provisional application to which priority is claimed. To properly support the alleged rejection, the Examiner must provide a copy of the provisional application and an identification as to where (in the provisional application) the cited subject matter is disclosed (since it is the Examiner's burden to form a *prima facie* rejection).

Notwithstanding the foregoing, and to advance the prosecution of this application, Applicant hereby advises the Examiner that the present invention was both conceived and reduced to practice prior to the filing date of the nonprovisional application to which *Nodoushani* claims priority. The Applicant has not submitted a 131 declaration to accompany this response, as such is not believed to be necessary based at least on the previously filed declaration, which predated a filing date of December 30, 1998. As that declaration also suffices to predate the effective nonprovisional filing date of the *Nodoushani* reference, an additional declaration is not necessary. Should, however, the Examiner maintain his reliance upon *Nodoushani*, and mail a subsequent Office Action that provides a copy of the provisional application (with the requisite support for a proper rejection), then Applicant may respond with a 131 declaration at that time to predate the provisional filing date. It is noted, however, that any such ensuing Office Action should be made non-Final, as it will set forth new grounds of rejection that are not necessitated by any amendment.

Subject matter from previous dependent claim 20 has been added to the independent claims through the preceding amendments. Therefore, Applicants respectfully submit that claims 2, 26, 27, 45, and 46 are allowable as a matter of law. Additionally and notwithstanding the foregoing reasons for the allowability of claims 2, 26, 27, 45, and 46, these claims recite features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence, there are other reasons why claims 2, 26, 27, 45, and 46 are allowable.

B. Dependent Claims 3-18, 21-25, and 28-44

Because the independent claims as amended are allowable over the cited art of record, the corresponding dependent claims are allowable as a matter of law for at least the reason that the dependent claims contain all the steps/features of the corresponding independent claims. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since the dependent claims are patentable, the rejection to the dependent claims should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of the independent claims, the dependent claims recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited art of record. Hence there are other reasons why the dependent claims are allowable.

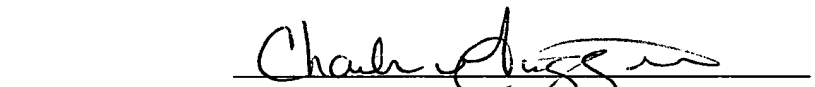
IV. Miscellaneous Issues

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 2-18 and 21-46 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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